

Bail Slip

The Accused/Appellants Viz., 1. Mookan @ Pachamauthu Konar
2. Kumar, 3. Balusamy, 4. Ponnusamy, 5. Devaraj, 6. Paulraj, were
directed to be released on bail as per order of this Court dated
28.9.2001 and made in Crl.MP.No.6318 of 2001 in Crl.Appeal No. 845
of 2001 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No.845 of 2001

1. Mookan @ Pachamauthu Konar
2. Kumar
3. Balusamy
4. Ponnusamy
5. Devaraj
6. Paulraj

..Appellants/accused

-vs-

The Inspector of Police
Perambalur Police Station
Perambalur District
(Crime No.273/2000)

... Respondent/complainant

This appeal is filed against the Judgment made in
S.C.No.18 of 2001 dated 31.8.2001 on the file of the Principal
Sessions Judge, Perambalur.

For appellants : Mr.A.Padmanabhan

For respondent : Mr.V.R.Balasubramaniam

Additional Public Prosecutor.

JUDGMENT

This appeal has been preferred against the Judgment in
S.C.No.18 of 2001 on the file of the Principal Sessions Judge,
Perambalur.

2. There are totally six accused who have been charged under Sections 148, 324, 324 r/w 149, 341, 506(ii), 302 and 302 r/w 149 of IPC. The learned Sessions Judge has acquitted the accused under Sections 341 and 506(ii) of IPC against which there is no appeal preferred by the State.

3. The accused have been furnished with copies under Section 207 of Cr.P.C by the learned committal Magistrate, Judicial Magistrate, Perambalur, who had committed the case to the Court of Sessions under Section 209 of Cr.P.C. On appearance of the accused, learned Sessions Judge/Principal Sessions Judge, Perambalur had framed charges against A1 to A6 under Sections 148, 324 IPC against A1 and A4 to A6 and also framed charges under Section 324 r/w 149 IPC against A2 to A6 and A1 to A3 under Sections 341 and 506(ii) of IPC against A1 to A6 and under Section 302 IPC against A1 to A4 and under Section 302 r/w 149 of IPC against A5 and A6 and when questioned the accused, pleaded not guilty.

4. Before the trial Court, P.Ws 1 to 14 were examined. Exs P1 to P22 were exhibited and M.Os 1 to 5 were marked.

5. P.W.1 Balakrishnan, is the son of deceased Muthusamy. According to him, due to previous enmity in connection with the disbursement of wages to his labourers, due to instigation by A3 Balusamy, there arose a quarrel in front of the village chavadi between the accused and P.W1 and his deceased father Muthusamy and when he enquired about the instigation made by A3 against his labourers, all the accused assembled with deadly weapons near the village chavadi and A1 Mookan had caused a cut injury with an aruval on his right big toe and other accused have assaulted him with sticks and logs. When his father Muthusamy came to his rescue, A1, with a help of M.O.4 towel had twisted his neck causing grievous injuries on the head, nose, and abdomen with logs and A5 had kicked on the testicles which resulted in his father falling down unconsciously and his father was taken inside the house by Rangaraj and Jayaraman and at that time, P.W.2 Chinnammal, P.W.3 Rani, P.W.4 Ramadoss have rushed to the place of occurrence and that P.W.6 Jayaraman and one Rangaraj took the injured Muthusamy/his father inside the house and that A1 to A6 have wrongfully restrained PWs from taking the injured Muthusamy to the hospital and that first aid was given to him in the house itself and Muthusamy succumbed to his injuries on the next day at 12.30p.m. Thereafter, he had preferred a complaint with the police. He has identified M.O.1 is Koduval used by A1 in causing injury on his right big toe and M.O.2 is the log used by A2 and M.O.3 is the log used by A3 and M.O.4 is the towel used by A1 to twist the neck of the deceased.

5a. P.W.2, Chinnammal and P.W.3 Rani and P.W.4 Ramadoss have also corroborated the evidence of P.W.1. P.W.5 has not supported the case of the prosecution. Hence he was treated as a hostile witness. P.W.6 Jayaraman would also corroborate the evidence of P.W.1 but he would state that A4 Devaraj had kicked on the scrotum of the deceased Muthusamy (Devaraj is A5 and not A4). According to him, he had removed along with Rangaraj, the injured Muthusamy, after the occurrence into his house and that the accused have wrongfully restrained them from taking Muthusamy to the hospital.

5b. The complaint preferred by P.W.1 was registered by P.W.11, the Sub Inspector of Police, Perambalur Police Station under Perambalur Police Station Crime No.273/2000 under Sections 147,148,341,323,324,506(ii) of IPC and 302 r/w 109 IPC. Ex P12 is the first information report.

5c. P.W.13 is the investigating Officer. He had visited the place of occurrence on 30.5.2000 at 17.00 hours and prepared Exs P2 and P3 Observation Mahazar in the presence of P.W.7 and also had drawn Ex P14 rough sketch and had conducted an inquest on the corpse of Muthusamy in the presence of panchayatars. Ex P15 is the inquest report. He had recovered M.O.4 towel from the corpse in the presence of P.W.7 under Ex P4 recovery mahazar. He had examined the witnesses and recorded their statements. He had arrested A1 on 1.6.2000 and had recorded the voluntary confession statement of A1. On the basis of Ex P16, A1 took P.W.13 and the other witnesses to a bridge situated $\frac{1}{2}$ kilometer away from Palayam Village on the Perambalur-Thuraiyur Road and took out M.O.1 to M.O.3 from the hidden place which were recovered under Ex P6 mahazar in the presence of P.W.8. Thereafter, A1 was produced before the Judicial Magistrate for remand. He had given Ex P17 the letter of requisition to the Court for sending Hyoid bone for chemical examination.

5d. P.W.9 is the doctor, who had conducted autopsy on the corpse of Muthusamy on 31.5.2000 between 10.30 am and 11.45 a.m.,. The doctor had seen a contusion in the right side of the scrotum measuring 4 x 4cm. He found the hyoid bone was in tact. Ex P10 is the postmortem report. Ex P8 and Ex P9 are the chemical reports. P.W.10 is the photographer, who had taken M.O.5 series photographs at the place of occurrence.

5e. P.W.12 is the postmortem constable, who had identified the corpse to the post mortem doctor. P.W.14 is the doctor, who had examined P.W.1 on 30.5.2000 at 8.20 p.m and had issued Ex P19 wound certificate and has also examined P.W.2 Chinnammal on the same day at 7.00p.m., and had issued Ex P20 wound certificate. After completing the formalities, P.W.13 has laid charge sheet against the accused.

6. When incriminating circumstances under Section 313 Cr.P.C.were put to the accused, they would deny their complicity with the crime.

7. The learned Sessionsl Judge, after meticulously going through the evidence both oral and documentary has acquitted the accused against the charges under Sections 341 and 506(ii) of IPC and has convicted A1 to A6 under Section 148 IPC and sentenced to undergo two years Rigorous imprisonment and a fine of Rs.400/- each with default sentence and has convicted A1 under Section 324 IPC and sentenced him to undergo two years rigorous imprisonment and a fine of Rs.400/- with default sentence and has convicted A2 to A6 under Section 324 r/w 149 IPC and sentenced them to undergo two years rigorous imprisonment each and slapped a fine of Rs.400/- each with default sentence. He has convicted A4 to A6 under Section 324 IPC and sentenced them to undergo two years rigorous imprisonment each and a fine of Rs.400/- each with default sentence. A1 to A3 were convicted under Section 324 r/w 149 of IPC and sentenced to undergo two years rigorous imprisonment each and slapped a fine of Rs.400/- each with default sentence. A1 to A4 were convicted and sentenced under Section 304 (i) IPC to undergo five years rigorous imprisonment and a fine of Rs.1000/- each. A5 and A6 were convicted under Section 304(i) r/w 149 of IPC and sentenced them to undergo five years rigorous imprisonment each and a fine of Rs.1000/- each. Aggrieved by the findings of the learned trial Judge, the accused have preferred this appeal.

8. Now the point for consideration in this appeal is whether the conviction and sentence by the learned trial Judge against the accused under Sections 148,324,324 r/w 149,304(1) and 304 r/w 149 is sustainable for the reasons stated in the memorandum of appeal?

9. Heard Mr.A.Padmanabhan, learned counsel appearing for the appellants and Mr.V.R.Balasubramaniam, learned Additional Public Prosecutor for the respondent and considered their respective submissions.

10. The Point:
Mr.A.Padmanabhan,the learned counsel appearing for the appellants would contend that there is no explanation forthcoming from the side of the prosecution for the inordinate delay in preferring the complaint for an offence which took place on 29.5.2000 at 6.30p.m., P.W.1, according to the prosecution, has preferred the complaint only on 30.5.2000 at 3.30p.m., The reason assigned by P.W.1 and other ocular witnesses viz., P.W.2 to P.W.4 for the delay in preferring the complaint was that after the occurrence A1 to A6 guarded outside with deadly weapons preventing the prosecution witnesses to go out of the house to prefer the complaint. But it

is seen from the evidence of P.W.14, the doctor, who had examined P.W.1 on 30.5.2000 at 8.20 p.m., had only noticed and abrasion on the right big toe measuring 1 x 1 cm on P.W.1. He has also examined P.W.2 and P.W.3 on the same day at 7.00 p.m., and 8.00p.m., respectively an issued Ex P20 wound certificate for P.W.2 and Ex P21 wound certificate for P.W.3 and also for P.W.4 and had issued Ex P22 after examining him at 8.00p.m., on the same day. P.W.1 in the cross examination would admit that the occurrence took place on 29.5.2000 but P.W.2 to P.W.4 have informed P.W.14 the doctor while they were being examined by them that the occurrence had taken place at 8.00p.m., on 30.5.2000. So there is a material contradiction between the evidence of P.W.1 and P.Ws 2 to 4 in respect of date and time of the alleged occurrence.

11. According to P.W.1, at the time of occurrence, A1 had caused cut injury on his right big toe which was also corroborated by P.W.2 and P.W.3. But according to P.W.14, the doctor, there was a lacerated injury seen on the right big toe of P.W.1. The learned trial Judge has acquitted the accused for an offence under Section 341 and 506(ii) of IPC on the ground that there is no substantial evidence against them to convict under Sections 341 and 506(ii) of IPC. There is no appeal preferred by the State against the said findings of the learned trial Judge. Under such circumstances, the reasoning assigned by P.W.1 for not preferring the complaint immediately after the occurrence falls to the ground.

12. Now we have to consider whether the conviction by the learned trial Judge under Section 304 (i) and 304 r/w 149 of IPC against A1 to A4 and A5 and A6 under Section 304 r/w 149 of IPC is sustainable. According to P.W.1, at the time of occurrence, A1 by using M.O.4 towel had twisted the neck of his father Muthusamy and at that time A2 and A3 have assaulted his father with logs on his father's head, nose and abdomen causing grievous injuries and that A5 during the course of transaction had kicked on the scrotum of his father Muthusamy. But the evidence of P.W.9, the postmortem doctor would say that there is no ligature mark found on the neck of the deceased and there was no injury found on the head, nose and abdomen. The opinion of the doctor for the cause of death of the deceased Muthusamy was that the injury he had sustained on the scrotum and not due to anything else. But the 8th charge framed by the learned Sessions Judge against A4 is that he had squeezed testicles of the deceased Muthusamy and caused injuries on the scrotum of Muthusamy. But all the ocular witnesses viz., P.W.1 to P.W.4 would depose that A5 had kicked on the scrotum of Muthusamy at the time of occurrence. P.W.6 alone in his evidence would depose that A4 Devaraj had kicked on the scrotum of Muthusamy. But A4 is Ponnusamy and not Devaraj. But he had mentioned the name of the accused as Devaraj, who had kicked on the scrotum of Muthusamy at the time of occurrence.

13. Mr.A.Padmanabhan, the learned counsel appearing for the appellants would also point out that the material objects seized from the accused under Section 27 of the Indian Evidence Act were not sent for chemical analysis. Under such circumstances, I am of the view that the prosecution has miserably failed to prove the guilt against the accused under Section 304(i) and under Section 304 r/w 149 of IPC . The point is answered accordingly.

14.In fine, the appeal is allowed and the conviction and sentence of the learned Sessions Judge in S.C.No.18 of 2004 on the file of the Principal Sessions Judge, Perambalur is set aside and the accused are acquitted from all the charges levelled against them. Fine amount if any paid, shall be refunded to them. The bail bond stands cancelled.

sg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal Sessions Judge, Perambalur.
2. The Judicial Magistrate, Perambalur.
3. -do- through the Chief Judicial Magistrate, Perambalur.
4. The Public Prosecutor, High Court, Madras
5. The Inspector of Police, Perambalur Police Station, Perambalur
6. The Superintendent, Central Prison, Trichy
7. The District Collector, Perambalur District.
8. The Director of General of Police, Chennai.

+ 1 cc to Mr. A. Padmanabhan, Advocate SR No. 45645

ASM(CO)

SR/2.8.2007

Cr1.A.No.845/2001

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